

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIM CHUN and SRY CHOU,)	
)	No. CIV-S-04-1098 GEB (DAD)
Plaintiffs,)	
)	<u>ORDER</u> *
v.)	
)	
U.S. POSTAL SERVICE,)	
)	
Defendant.)	
_____)	

On May 27, 2005, Defendant moved for dismissal on the grounds that it is not a proper party defendant and that service of process has not been effected. Alternatively, Defendant moved for summary judgment. No opposition to Defendant's motion was filed.

Since the factual and legal assertions in Defendant's motion have not been controverted, and Defendant's specific averments demonstrate that Plaintiffs' lawsuit against the U.S. Postal Service *eo nomine* is based on a tort, it is obvious that Plaintiffs have sued the wrong defendant. "[T]he United States is the only proper party defendant in [a tort] action." Kennedy v. United States Postal Serv.,

* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

1 145 F.3d 1077, 1078 (9th Cir. 1988). Therefore, Defendant's motion to
2 dismiss is granted and this action is dismissed.

3 IT IS SO ORDERED.

4 Dated: June 30, 2005

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6 /s/ Garland E. Burrell, Jr.
7 GARLAND E. BURRELL, JR.
8 United States District Judge
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